

AMENDED IN ASSEMBLY JULY 1, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 18, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 15, 2009

SENATE BILL

No. 603

Introduced by Senator Padilla

(Principal coauthor: Assembly Member Beall)

(Coauthors: Senators DeSaulnier, Leno, Oropeza, and Romero)

February 27, 2009

An act to amend Sections 22972 and 22973, 22973, and 22974.8 of, and to add Sections 22973.3 and 22973.4 to, the Business and Professions Code, relating to retail tobacco sales.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as amended, Padilla. Retail *cigarette and* tobacco sales: ~~licenses:~~ *licenses: violations.*

The

(1) *The California Cigarette and Tobacco Products Licensing Act of 2003* requires a retailer to obtain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in this state, requires a retailer to obtain a separate license for each retail location, requires retailer licensees to pay a one-time license fee of \$100, no renewal fee, and a reinstatement fee of \$100 if the license is renewed after lapse, and authorizes the board to suspend or revoke the license of any retailer of tobacco products that is in violation of the act.

Existing law requires all moneys collected pursuant to the act to be deposited in the Cigarette and Tobacco Products Compliance Fund, which is available for appropriation by the Legislature solely for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003.

This bill would specify that a new license may not be issued to a retailer for a retail location that is located within 600 feet of a school, except as specified.

This bill would prohibit the board from issuing a new license to a retailer for a retail location in an area of overconcentration, as defined. The bill would authorize the board to issue a new license if the local governing body of the area in which the applicant's premises are located, or its designated subordinate officer or body, determines that public convenience or necessity would be served by the issuance. The bill would require that determination to be made within 90 days of notification of a completed application, as specified, except that if the local governing body, or its designated subordinate officer or body, did not make a determination within 90 days the license would be deemed denied. The board would be authorized to issue a license if the determination is made within the 90-day period and the applicant shows that public convenience or necessity would be served by the issuance.

The bill would set the renewal fee at \$100. This bill would allow, under specified circumstances, a retailer to transfer an existing license to another person for continued use at the same location upon the sale or transfer of the business holding the license, if the business is in an area of overconcentration.

This bill would require the Department of Alcoholic Beverage Control and the State Department of Public Health to provide specified information to the board upon request.

(2) Existing law, the Stop Tobacco Access to Kids Enforcement Act or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors. Existing law also makes it a misdemeanor for a retailer to knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sell, give, or in any way furnish a minor with tobacco products or paraphernalia. Under existing law, violation of the STAKE Act or the misdemeanor provision result in State Board of Equalization action, on a set schedule, relating to the licensure of the retailer when the youth purchase survey finds that 13% or more of youth are able to purchase cigarettes, and

makes the board's authority inoperative when a youth purchase survey shows less than 13% of youth were able to purchase cigarettes.

This bill would allow the board to take action relating to the licensure of retailers who have violated the STAKE Act and misdemeanor provisions at any time, would require the enforcing agency to notify the board of a conviction of a violation in a timely manner, and would require the board to take appropriate action upon that notification. This bill would delete the provision conditioning the board's authority to take action against retailers on the results of a youth purchase survey. This bill would also modify the schedule of actions taken by the board for violations.

This bill would require the Department of Alcoholic Beverage Control and the State Department of Public Health to provide specified information to the board upon request.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22972 of the Business and Professions
- 2 Code is amended to read:
- 3 22972. (a) Commencing June 30, 2004, a retailer shall have
- 4 in place and maintain a license to engage in the sale of cigarettes
- 5 or tobacco products. A retailer that owns or controls more than
- 6 one retail location shall obtain a separate license for each retail
- 7 location, but may submit a single application for those licenses.
- 8 (b) The retailer shall conspicuously display the license at each
- 9 retail location in a manner visible to the public.
- 10 (c) A license is not assignable or transferable. A person who
- 11 obtains a license as a retailer who ceases to do business as specified
- 12 in the license, or who never commenced business, or whose license
- 13 is suspended or revoked, shall immediately surrender the license
- 14 to the board.
- 15 (d) A license shall be valid for a 12-month period upon issuance
- 16 of the licence pursuant to Section 22973.1, unless surrendered,
- 17 suspended, or revoked prior to the end of the 12-month period,
- 18 and may be renewed annually upon payment of the fee prescribed
- 19 in subdivision (d) of Section 22973.
- 20 (e) Any subsequent license issued to a retailer that owns or
- 21 controls more than one retail location shall be valid for a partial

1 year period from the start date of the new license to the end of the
2 12-month period of the initial license. After a partial year period,
3 all licenses held by a retailer that owns or controls more than one
4 retail local shall be valid for the same 12-month period as a
5 retailer's initial license.

6 SEC. 2. Section 22973 of the Business and Professions Code
7 is amended to read:

8 22973. (a) An application for a license shall be filed on or
9 before April 15, 2004, on a form prescribed by the board and shall
10 include the following:

11 (1) The name, address, and telephone number of the applicant.

12 (2) The business name, address, and telephone number of each
13 retail location. For applicants who control more than one retail
14 location, an address for receipt of correspondence or notices from
15 the board, such as a headquarters or corporate office of the retailer,
16 shall also be included on the application and listed on the license.
17 Citations issued to licensees shall be forwarded to all addressees
18 on the license.

19 (3) A statement by the applicant affirming that the applicant
20 has not been convicted of a felony and has not violated and will
21 not violate or cause or permit to be violated any of the provisions
22 of this division or any rule of the board applicable to the applicant
23 or pertaining to the manufacture, sale, or distribution of cigarettes
24 or tobacco products. If the applicant is unable to affirm this
25 statement, the application shall contain a statement by the applicant
26 of the nature of any violation or the reasons that will prevent the
27 applicant from complying with the requirements with respect to
28 the statement.

29 (4) If any other licenses or permits have been issued by the
30 board or the Department of Alcoholic Beverage Control to the
31 applicant, the license or permit number of those licenses or permits
32 then in effect.

33 (5) A statement by the applicant that the contents of the
34 application are complete, true, and correct. Any person who signs
35 a statement pursuant to this subdivision that asserts the truth of
36 any material matter that he or she knows to be false is guilty of a
37 misdemeanor punishable by imprisonment of up to one year in the
38 county jail, or a fine of not more than one thousand dollars
39 (\$1,000), or both the imprisonment and the fine.

40 (6) The signature of the applicant.

1 (7) Any other information the board may require.

2 (b) The board may investigate to determine the truthfulness and
3 completeness of the information provided in the application. The
4 board may issue a license without further investigation to an
5 applicant for a retail location if the applicant holds a valid license
6 from the Department of Alcoholic Beverage Control for that same
7 location.

8 (c) The board shall provide electronic means for applicants to
9 download and submit applications.

10 (d) (1) A license fee of one hundred dollars (\$100) shall be
11 submitted with each application and application for renewal. An
12 applicant that owns or controls more than one retail location shall
13 obtain a separate license for each retail location, but may submit
14 a single application or application for renewal for those licenses
15 with a license fee of one hundred dollars (\$100) per location. The
16 fee shall not be prorated.

17 (2) If a license is reinstated after its expiration, the retailer, as
18 a condition precedent to its reinstatement, shall also pay a
19 reinstatement fee of one hundred dollars (\$100).

20 (e) An application for renewal shall be in the form as prescribed
21 by the board, which may include, but not be limited to, the name,
22 address, and telephone number of the applicant, business name,
23 address, and telephone number of each retail location, and any
24 other information as the board deems necessary for the proper
25 administration of this division.

26 SEC. 3. Section 22973.3 is added to the Business and
27 Professions Code, to read:

28 22973.3. (a) The board shall not issue a new license to a
29 retailer for a retail location in an area of overconcentration.

30 (b) Notwithstanding subdivision (a), the board may issue a new
31 license if the local governing body of the area in which the
32 applicant's premises are located, or its designated subordinate
33 officer or body, determines within 90 days of notification of a
34 completed application that public convenience or necessity would
35 be served by the issuance. The 90-day period shall commence
36 upon receipt by the local governing body of (1) notification by the
37 board of an application for licensure, or (2) a completed application
38 according to local requirements, if any, whichever is later.

1 If the local governing body, or its designated subordinate officer
2 or body, does not make a determination within the 90-day period,
3 the license shall be deemed denied.

4 (c) For purposes of this section:

5 (1) “Area of overconcentration” means an area where the ratio
6 of retail licenses to population in the census tract is greater than
7 the ratio of retail licenses to population in the county overall.

8 (2) “Population in census tract” means the population as
9 determined by the most recent United States decennial or special
10 census. The population determination shall not operate to prevent
11 an applicant from establishing that an increase of resident
12 population has occurred within the census tract.

13 (3) “Population in the county” means the annual population
14 estimate for California counties published by the Population
15 Research Unit of the Department of Finance.

16 (d) Notwithstanding subdivision (c) of Section 22972, this
17 section shall not apply to the renewal or transfer of a retail license.

18 (e) (1) Notwithstanding any other law, subject to approval by
19 the board, in an area of overconcentration, a retailer may transfer
20 an existing license to another person only for the continued use at
21 the same location upon the sale or transfer of the business holding
22 the license, only to a person who otherwise meets the requirements
23 for the issuance of a new license, and only after first providing 30
24 days notice to the board together with an application for transfer,
25 all transfer documents, and evidence that the transferee would
26 meet the requirements for the issuance of a new license.

27 (2) The application for transfer shall be in the form as prescribed
28 by the board and contain any information that the board may
29 require. A transfer fee of one hundred dollars (\$100) shall be
30 submitted with each application.

31 (f) This section shall not preempt a local jurisdiction from
32 adopting an ordinance that is more restrictive than this section with
33 regard to retailers.

34 (g) In an area of overconcentration, the board may reinstate an
35 expired license within six months after its expiration.

36 (h) The Department of Alcoholic Beverage Control shall, upon
37 request, provide to the board any licensure information, including,
38 but not limited to, applications, license issuance, license transfers,
39 license denials, or any other information necessary to administer
40 this chapter. The State Department of Public Health shall, upon

1 request, provide to the board any information, including, but not
2 limited to, statewide information on the annual Youth Tobacco
3 Purchase Survey, STAKE Act compliance checks, California
4 retailers and youth tobacco control laws, or any other information
5 necessary to administer this chapter.

6 SEC. 4. Section 22973.4 is added to the Business and
7 Professions Code, to read:

8 22973.4. (a) The board shall not issue a new retail license to
9 a retailer for a retail location that is located within 600 feet of a
10 public or private elementary or secondary school.

11 (b) (1) Notwithstanding subdivision (a), the board may issue a
12 new retail license to a retailer for a retail location that is located
13 within 600 feet of a public or private elementary school if the local
14 governing body of the area in which the applicant's premises are
15 located, or its designated subordinate officer or body, determines
16 within 90 days of notification of a completed application that public
17 convenience or necessity would be served by the issuance. The
18 90-day period shall commence upon receipt by the local governing
19 body of either of the following:

20 (A) Notification by the board of an application for licensure.

21 (B) A completed application according to local requirements,
22 if any, whichever is later.

23 (2) If the local governing body, or its designated subordinate
24 officer or body, does not make a determination within the 90-day
25 period, the license shall be deemed denied.

26 (c) This section shall not preempt a local jurisdiction from
27 adopting an ordinance that is more restrictive than this section with
28 regard to retailers or proximity to a school.

29 (d) The Department of Alcoholic Beverage Control, shall, upon
30 request, provide to the board any licensure information, including,
31 but not limited to, applications, license issuance, license transfers,
32 license denials, or any other information necessary to administer
33 this chapter. The State Department of Public Health, shall, upon
34 request, provide to the board any information, including, but not
35 limited to, statewide information on the annual Youth Tobacco
36 Purchase Survey, Stop Tobacco Access to Kids Enforcement Act
37 (STAKE ACT) (Division 8.5 (commencing with Section 229550)
38 compliance checks, California retailers and youth tobacco control
39 laws, or any other information necessary to administer this chapter.

1 *SEC. 5. Section 22974.8 of the Business and Professions Code*
2 *is amended to read:*

3 22974.8. (a) (1) The board shall take action against a retailer,
4 convicted of a violation of either the ~~Stake~~ *STAKE* Act (Division
5 8.5 (commencing with Section ~~22950~~) 22950)) or Section 308 of
6 the Penal Code, according to the schedule set forth in subdivision
7 (b).

8 (2) Convictions of violations by a retailer at one retail location
9 may not be accumulated against other locations of that same
10 retailer.

11 (3) Convictions of violations accumulated against a prior retail
12 owner at a licensed location may not be accumulated against a
13 new retail owner at the same retail location.

14 (4) Prior to suspending or revoking a retailer's license to sell
15 cigarette and tobacco products, the board shall notify the retailer.
16 The notice shall include instructions for appealing the license
17 suspension or revocation.

18 (b) (1) Upon the first conviction of a violation of either the
19 *STAKE* Act (Division 8.5 (commencing with Section ~~22950~~)
20 22950)) or Section 308 of the Penal Code, the retailer shall receive
21 a warning letter from the board that delineates the circumstances
22 under which a retailer's license may be suspended or revoked and
23 the amount of time the license may be suspended or revoked. The
24 retailer and its employees shall receive training on tobacco control
25 laws from the *State Department of Public Health Services* upon a
26 first conviction. *The retailer shall also be assessed a fine of seven*
27 *hundred fifty dollars (\$750).*

28 (2) Upon the second conviction of a violation of either the
29 *STAKE* Act (Division 8.5 (commencing with Section 22950)) or
30 Section 308 of the Penal Code ~~within 12 months~~, the retailer shall
31 be ~~subject to~~ *assessed* a fine of *one thousand five hundred dollars*
32 ~~(\$500)~~ *(\$1,500)*. *The board shall suspend the retailer's license to*
33 *sell cigarette and tobacco products for 25 days.*

34 (3) Upon the third conviction of a violation of either the *STAKE*
35 Act (Division 8.5 (commencing with Section 22950)) or Section
36 308 of the Penal Code ~~within 12 months~~, ~~the retailer shall be~~
37 ~~subject to a fine of one thousand dollars (\$1,000)~~ *Code, the board*
38 *shall revoke the retailer's license to sell cigarette and tobacco*
39 *products.*

1 ~~(4) Upon the fourth to the seventh conviction of a violation of~~
2 ~~either the STAKE Act (Division 8.5 (commencing with Section~~
3 ~~22950)) or Section 308 of the Penal Code within 12 months, the~~
4 ~~board shall suspend the retailer's license to sell cigarette and~~
5 ~~tobacco products for 90 days.~~

6 ~~(5) Upon the eighth conviction of a violation of the STAKE Act~~
7 ~~(Division 8.5 (commencing with Section 22950) or Section 308~~
8 ~~of the Penal Code within 24 months, the board shall revoke the~~
9 ~~retailer's license to sell cigarette and tobacco products.~~

10 ~~(e) The decision of the board to suspend or revoke the retailer's~~
11 ~~license may be appealed to the board within 30 days after the notice~~
12 ~~of suspension or revocation. All appeals shall be submitted in~~
13 ~~writing.~~

14 ~~(d) The board's authority to take action against retailers, as set~~
15 ~~forth in this section, commences on the date of the release of the~~
16 ~~results from the survey undertaken by the Department of Health~~
17 ~~Services pursuant to Section 22952 of the Business and Professions~~
18 ~~Code Section 22952 to comply with Section 1926 of Title XIX of~~
19 ~~the federal Public Health Service Act (42 U.S.C. 300x-26), and~~
20 ~~any implementing regulations adopted in relation thereto by the~~
21 ~~United States Department of Health and Human Services, showing~~
22 ~~that the youth purchase survey finds that 13 percent or more of~~
23 ~~youth were able to purchase cigarettes. The board's authority to~~
24 ~~take action under this section is inoperative on or after the date of~~
25 ~~the subsequent release of the results from the survey showing that~~
26 ~~less than 13 percent of youth were able to purchase cigarettes.~~

27 ~~(c) For any conviction of a violation of either the STAKE Act~~
28 ~~(Division 8.5 (commencing with Section 22950)) or Section 308~~
29 ~~of the Penal Code, the State Department of Public Health or other~~
30 ~~enforcing agency shall notify the board of the conviction in a timely~~
31 ~~manner, and the board shall take appropriate action pursuant to~~
32 ~~that notification. If a state or local law enforcement agency does~~
33 ~~not timely notify the board, the board may take action against a~~
34 ~~retailer for the violation. For purposes of this subdivision, "timely~~
35 ~~manner" means when the conviction is obtained and all appeal~~
36 ~~rights are exhausted.~~

37 ~~(d) (1) Notwithstanding any other provision of this division,~~
38 ~~no licensee may petition the board for an offer in compromise for~~
39 ~~a third or any subsequent violation of either the STAKE Act~~
40 ~~(Division 8.5 (commencing with Section 22950)) or Section 308~~

1 of the Penal Code that occurs within 36 months of the initial
2 violation.

3 (2) Notwithstanding any other law, the board may revoke a
4 license for a third violation of either the STAKE Act (Division 8.5
5 (commencing with Section 22950)) or Section 308 of the Penal
6 Code that occurs within any 36-month period. This paragraph
7 shall not be construed to limit the board's authority and discretion
8 to revoke a license prior to a third violation when the
9 circumstances warrant that penalty.

10 (3) For purposes of this subdivision, no violation may be
11 considered for purposes of determination of the penalty until it
12 has become final.

13 (e) The Department of Alcoholic Beverage Control shall, upon
14 request, provide to the board any licensure information, including,
15 but not limited to, applications, license issuance, license transfers,
16 license denials, or any other information necessary to administer
17 this chapter. The State Department of Public Health shall, upon
18 request, provide to the board any information, including, but not
19 limited to, statewide information on the annual Youth Tobacco
20 Purchase Survey, STAKE compliance checks, California retailers
21 and youth tobacco control laws, or any other information necessary
22 to administer this chapter.

23 (f) For purposes of this section, "conviction of a violation"
24 includes a conviction under Section 308 of the Penal Code, or a
25 final administrative adjudication imposing a civil penalty under
26 the STAKE Act.